

OGC 88-04703

OFFICE OF CONGRESSIONAL AFFAIRS

Routing Slip

	ACTION	INFO
1. D/OCA		
2. DD/Legislation	XXX	
3. DD/Senate Affairs		
4. Ch/Senate Affairs		
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7. Admin Officer		
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9. Constituent Inquiries Officer		
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POF-LEG

SUSPENSE

30 NOV 88

Date

Action Officer:

Remarks:

Action Completed
Explained addition of \$24,330 of
ACT - (See OCA 2644-88) ~~770~~ per Telephone
Mac Reed said he would add to notes.

30 NOV 88

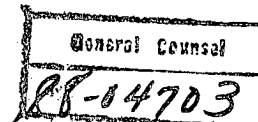
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503



November 16, 1988

MEMORANDUM FOR DESIGNATED AGENCY HEADS

OCA FILE

LEG

FROM: Alan Charles Raul *ACR*
General Counsel

SUBJECT: Executive Order Implementing the Omnibus Trade Act

Enclosed is a proposed Executive order entitled "Implementing the Omnibus Trade and Competitiveness Act of 1988 and Related International Trade Matters."

In accordance with the provisions of Executive Order No. 11030, as amended, it was prepared and is being submitted by this office. The draft reflects the submissions of various agencies. We attempted to take a consistent approach in the draft in favor of maximum inter-agency consultation and coordination on all significant matters in the trade area. If there are any subjects covered in the Omnibus Trade Act for which an explicit reference to inter-agency consultation and coordination could be appropriate, and we have not mentioned it in the draft, please advise us accordingly. In addition, if there are any further matters that should be addressed in the proposed Executive order, we would appreciate your bringing them to our attention as soon as possible.

On behalf of the Director of the Office of Management and Budget, I would appreciate receiving any comments you may have concerning this proposal. Please ask your staff to communicate your comments to me or Assistant General Counsel Mac Reed (395-5600) by no later than close of business Wednesday, November 23, 1988.

Thank you.

Enclosures: Distribution List
Draft Proposed Executive Order

Distribution List

Honorable George P. Shultz
Secretary of State

Honorable Nicholas F. Brady
Secretary of the Treasury

Honorable C. William Verity
Secretary of Commerce

Honorable Clayton Yeutter
United States Trade Representative

Honorable Frank Carlucci
Secretary of Defense

Honorable Richard E. Lyng
Secretary of Agriculture

Honorable Dick Thornburgh
United States Attorney General

Honorable Donald Paul Hodel
Secretary of the Interior

Honorable John S. Herrington
Secretary of Energy

Honorable Arthur B. Culvahouse, Jr.
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Honorable William H. Webster
Director, Central Intelligence Agency

Honorable John A. Bohn, Jr.
Chairman, Export-Import Bank
of the United States

Honorable William Von Raab
Commissioner
United States Customs Service

Honorable Paul Schott Stevens
Executive Secretary
National Security Council

Honorable Craig Nalin
Chairman
Overseas Private Investment Corporation

Honorable William J. Maroni
Executive Secretary
Economic Policy Council

IMPLEMENTING THE OMNIBUS TRADE AND COMPETITIVENESS
ACT OF 1988 AND RELATED
INTERNATIONAL TRADE MATTERS

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the Omnibus Trade and Competitiveness Act of 1988 (Public Law No. 100-418, 102 Stat. 1107) ("Omnibus Trade Act"), the Export Administration Act of 1979 (50 U.S.C. App. Sections 2401-2420), as amended ("Export Administration Act"), the Tariff Act of 1930 (Chapter 497, 46 Stat. 590, June 17, 1930), as amended ("Tariff Act"), the National Defense Authorization Act, Fiscal Year 1989 (Public Law No. 100-456) ("Defense Authorization Act"), section 301 of Title 3 of the United States Code, and, in general, to ensure that the international trade and foreign policy of the United States shall be conducted and administered in a coordinated manner under the direction of the President, it is hereby ordered as follows:

PART I - TRADE, CUSTOMS, AND TARIFF LAWS

Section 1-101. Accession of State Trading Regimes to the General Agreement on Tariffs and Trade. The functions vested in the President by sections 1106(a), (b) and (d) of the Omnibus Trade Act, regarding the accession of state trading regimes to the General Agreement on Tariffs and Trade, are delegated to the United States Trade Representative.

Sec. 1-201. Wine Barriers. The functions vested in the President by section 1125 of the Omnibus Trade Act,

regarding the updated report on barriers to wine trade, are delegated to the United States Trade Representative.

Sec. 1-301. Enforcement of United States Rights Under Trade Agreements and Response to Certain Foreign Trade Practices; Coordination with the Economic Policy Council.

Sections 1301-1307 of the Omnibus Trade Act authorize the United States Trade Representative to take certain actions in connection with the enforcement of United States rights under trade agreements and in response to certain foreign trade practices. The United States Trade Representative is directed to consult and coordinate on relevant developments, including pending cases, with the appropriate Departments and agencies [including the the Departments of State, Treasury, and Commerce, the Office of Management and Budget, and the Council of Economic Advisors]. Officials with knowledge of relevant developments on any such matters involving trade agreements and practices shall bring them to the attention of the United States Trade Representative in a timely manner.

Sec. 1-401. Steel Imports. The functions vested in the President by section 805 (d), (1), (2) of the Trade and Tariff Act of 1984 (19 U.S.C. 2253, note), as amended by section 1322 of the Omnibus Trade Act, are delegated to the United States Trade Representative.

Sec. 1-501. Telecommunications Trade. The functions vested in the President by sections 1375 and 1376(e) of the Omnibus Trade Act, regarding certain telecommunications negotiations and reports thereon to Congressional Committees, are delegated to the United States Trade Representative, who shall consult and coordinate with other affected agencies as provided in section 1-301 of this Order.

Sec. 1-601. Uniform Fee on Imports. The functions

vested in the President by section 1428 of the Omnibus Trade Act, regarding negotiations to obtain authority under the General Agreement on Tariffs and Trade to impose a small uniform fee on imports, are delegated to the United States Trade Representative.

PART II - EXPORT ENHANCEMENT

Sec. 2-101. Countertrade and Barter.

(1) Establishment. There is established an interagency group on countertrade, which shall be composed of the Secretaries of State, Defense, Treasury, Labor, Agriculture, and the Administrator of the Agency for International Development and the Director of the Federal Emergency Management Agency, the United States Trade Representative and the Director of the Office of Management and Budget, or their respective representatives. The Secretary of Commerce shall be the Chairman of the interagency group.

(2) Functions. The interagency group shall carry out the functions and duties set out in section 2205(a) of the Omnibus Trade Act.

Sec. 2-201. Export Controls Generally. (1) Except as provided in paragraph 2 of this section the functions, authority and discretion conferred on the President by the provisions of the Export Administration Act are delegated to the Secretary of Commerce, who may redelegate such functions, authority, and discretion.

(2)(A) The functions, authority, and discretion conferred upon the President by sections 4(e), 5(c)(2), 5(d)(4), 5(d)(5), 5(f)(1)(A), 6(k)(1), 6(l), 6(m), (o), 7(d)(2), 10(g), 11A (excluding paragraph (g)), and 15 (a) of the Export Administration Act are reserved to the President.

(B) The functions, authority and discretion conferred upon the President by sections 3(7), 3(8) 6(j)(2) and 6(k)(2) of the Export Administration Act, and by sections

4(c), 5(c)(6)(A) (ii), 5(f)(4), 5(h)(6), 5(i) (excluding the last sentence), 6(d) and 6(h)(1) of the Act insofar as they relate to the conduct of negotiations with foreign governments, are delegated to the Secretary of State, with the power of redelegation. In all cases where the authority to conduct negotiations with foreign governments has been delegated to the Secretary of State by this Order, such negotiations shall be carried out in consultation with the participation of the Secretary of Commerce.

(3) Notwithstanding the revocations set forth in paragraph (7) of this section, the Export Administration Review Board ("Board"), which was established by Executive Order No. 11533 of June 4, 1970, as amended, and extended by Executive Order No. 12002 of July 7, 1977, is hereby continued. The Board shall have as members the Secretary of Commerce, who shall chair the Board, the Secretary of Treasury, the Secretary of Defense, the Secretary of State, the United States Trade Representative, and the Director of the Office of Management and Budget. No alternate Board members shall be designated, but the acting head or principal deputy of any member agency may serve in lieu of the head of the concerned agency. The Secretary of Commerce may invite the heads of other United States agencies, other than the agencies represented by Board members, to participate in the activities of the Board when matters of interest to such agencies are under consideration.

(4)(A) The Secretary of Commerce may refer to the Board such particular export administration matters, involving questions of national security or other major policy issues, as the Secretary deems appropriate. The Secretary of Commerce shall also refer to the Board any other such export administration matter, upon request of any other member of the Board or of the head of any other United

States Government department or agency having any interests in such matter. The Board shall consider the matters so referred to it, giving due consideration to the foreign policy of the United States, the national security, and the domestic economy, and shall make recommendations thereon to the Secretary of Commerce.

(B) To facilitate interagency consideration and resolution of matters within the purview of the Board, the Secretary of Commerce may establish and prescribe rules for subcommittees consisting of delegates of Board members and representatives of other agencies when matters of interest to such agencies are under consideration. With respect to matters in disagreement, the resolution of which is reserved to the President under the Export Administration Act, such rules may provide for escalation to more senior level subcommittees for review, or to the Board, with the burden of timely escalation imposed on agencies disagreeing with the action proposed by the Secretary of Commerce or his delegate.

(C) Pursuant to Section 8(b) of Executive Order No. 12291 of February 17, 1981, the Director of the Office of Management and Budget shall determine, notwithstanding Section 1(a)(2) of such Order, whether regulations, rules, or agency statements of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency relative to the administration of the Export Administration Act shall be exempt from review under such Order.

(5) All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued, or otherwise taken under, or continued in effect by, the Executive Orders revoked in paragraph (6) of this section and not otherwise revoked, shall remain in full force and effect under this section until amended or revoked by proper authority. Notwithstanding the revocation of the

Executive Orders listed in paragraph (6) of this section, the prohibitions, penalties or violations of any rules, regulations, orders, licenses, or other forms of administrative action under those orders during the period those orders were in effect shall not be affected.

(6) Executive Order No. 12002 of July 7, 1977, Executive Order No. 12214 of May 2, 1980, and Executive Order No. 12525 of July 12, 1985, are hereby revoked.

Sec. 2-301. Sanctions Against Toshiba and Kongsberg.

(1) Procurement Sanctions. (A) Departments, agencies and instrumentalities of the United States Government shall not for the three-year period beginning on the date this Order takes effect, contract with and procure products and services, except as provided in the Omnibus Trade Act, from Toshiba Machine Company, Kongsberg Trading Company, Toshiba Corporation, Kongsberg Vapenfabrikk, or any other foreign person found to have knowingly facilitated the diversion of advanced milling machinery by Toshiba Machine Company and Kongsberg Trading Company to the Soviet Union.

(B) The finding required in the Omnibus Trade Act by section 2443(a)(1)(B) shall be made by the Secretary of Defense as shall the determinations required to administer the exceptions in section 2443(c)(1).

(C) Exceptions under section 2443(c)(2) for procurement and contracting purposes shall be made by the head of the involved department, agency or instrumentality pursuant to regulations to be issued by the Secretary of the Treasury. Any exceptions for purchases from Toshiba Machine Company and Kongsberg Trading Company must be made in accordance with Treasury pursuant to paragraph (d) hereof.

(D) Guidelines for administering the procurement and contracting sanctions required by the Omnibus Trade Act shall be promulgated by the Administrator for Federal

Procurement Policy, Office of Management and Budget.

(2) Import Sanctions. (A) Except as provided by this Order and any rules, regulations, definitions or directives which may be issued pursuant thereto, the importation into the United States, including its territories and possessions, of products produced by Toshiba Machine Company or Kongsberg Trading Company is prohibited for the three-year period beginning on the date this Order takes effect.

(B) The prohibition contained in paragraph 2(A) of this section shall not apply to:

(i) Products provided under contracts or other binding agreements entered into before June 30, 1987;

(ii) Spare parts;

(iii) Component parts, but not finished products, essential to United States products or production;

(iv) Routine servicing and maintenance of products;

(v) Information and technology; and

(vi) Defense articles provided for in section 2443(c)(1) of the Omnibus Trade Act.

(C) The Secretary of the Treasury is hereby authorized to take such action, including the promulgation of rules, regulations, definitions or directives, as may be necessary to carry out the purpose of paragraphs 2(A), 2(B), and 2(C) of this section. The Secretary of the Treasury may redelegate any of these functions to other officers or agencies of the Federal Government.

PART III - FOREIGN CORRUPT PRACTICES AMENDMENTS;
INVESTMENT; AND TECHNOLOGY

Sec. 3-101. Foreign Corrupt Practices Act Amendments.

The functions conferred upon the President by section 5003(d)(1) of the Omnibus Trade Act are delegated to the Secretary of State, who in performing such functions shall

act in consultation with the Attorney General, the United States Trade Representative, the Securities and Exchange Commission, the Secretary of Commerce, the Secretary of the Treasury and the Director of the Office of Management and Budget.

Sec. 3-201. Authority to Review Certain Mergers, Acquisitions, and Takeovers. (1) Executive Order No. 11858, as amended, regarding the Committee on Foreign Investment in the United States (the "Committee") is further amended as follows:

(A) By adding new sections 7 and 8 as follows:

"Sec. 7. (1) Investigations. (a) The Committee is designated to receive notices and other information, to determine whether investigations should be undertaken, and to make investigations, pursuant to Section 721(a) of the Defense Production Act. (b) If the Committee determines that an investigation should be undertaken, such investigation shall commence no later than 30 days after receipt by the Committee of written notification of the proposed or pending merger, acquisition, or takeover. Such investigation shall be completed no later than 45 days after such determination. (c) If a majority of the Committee determines not to undertake an investigation, upon the request of two or more members, the Chairman shall submit a report to the President describing the differing views. Such report shall be submitted to the President no later than 25 days after receipt by the Committee of the notice of a proposed or pending merger, acquisition, or takeover.

(2) Report to the President. (a) Upon completion or termination of any investigation, the Committee shall report to the President and present a recommendation. Any such report shall include information relevant to subparagraphs (1) and (2) of 721(d) of the Defense Production Act. If the

Committee is unable to reach a unanimous recommendation in the report, the Chairman shall submit a report to the President describing the differing views. (b) If the Committee is unable to reach agreement on any issue, the Chairman shall decide the issue, or, on the request of two or more Committee members, the Chairman shall submit a report to the President describing the differing views and presenting the issue to the President for decision.

"Sec. 8. The Chairman of the Committee, in consultation with other members of the Committee, is directed to issue regulations to implement Section 721 of the Defense Production Act, as amended."

(B) By deleting, from the second sentence in Section 1(a), the text beginning with "a representative" and ending with "by each of."

(C) By deleting, from the third sentence in Section 1(a), the phrase "representative of the."

(D) By deleting "and" at the end of subparagraph (3) of Section 1(b), by substituting ";and" for the period at the end of subparagraph (4) of that Section, and by adding a new subparagraph (5) as follows: "(5) coordinate the views of the Executive Branch and discharge the responsibilities with respect to Section 721 (a) and (e) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2158 et seq.) ("Defense Production Act")."

(E) By adding the following sentence at the end of Section 5: "Information or documentary material filed pursuant to Section 1(b)(5) or Section 7 of this Order shall be treated in accordance with paragraph (b) of Section 721 of the Defense Production Act."

(F) By inserting in Section 1(a) an additional Committee member, "(7) The Director of the Office of Management and Budget."

(G) The Interim Presidential Directive to the Secretary of the Treasury of October 26, 1988, is hereby revoked and any notices received or investigations pending as of the date this Order takes effect shall be referred for any further action to the Chairman of the Committee.

Sec. 3-301. Reporting Requirement on Semiconductors, Fiber Optics and Superconducting Materials. (1) The Secretary of Commerce, in consultation with the Director of the Office of Management and Budget, shall prepare for the President to submit to the Congress with the Fiscal Year 1990 budget a report describing policies and budget proposals regarding:

(A) Federal research in semiconductors and semiconductor manufacturing technology, including a discussion of the respective roles of the various Federal departments and agencies in such research;

(B) Federal research and acquisition policies for fiber optics and optical-electronic technologies generally;

(C) Superconducting materials, including descriptions of research priorities, the scientific and technical barriers to commercialization which such research is designed to overcome, steps taken to ensure coordination among Federal agencies conducting research on superconducting materials, and steps taken to ensure coordination among Federal agencies conducting research on superconducting materials, and steps taken to consult with private United States industry to ensure that no unnecessary duplication of research exists and that all important scientific and technical barriers to the commercialization of superconducting materials will be addressed; and

(D) Federal research to assist United States industry to develop and apply advanced manufacturing technologies for the production of durable and nondurable goods.

(2) The Department of Defense, the Department of Energy, the National Science Foundation, the National Aeronautics and Space Administration and other Federal agencies deemed appropriate by the Secretary of Commerce shall provide the following information concerning their Fiscal Year 1989 program and proposed Fiscal Year 1990 program to the Secretary of Commerce in sufficient time to permit preparation of the report:

(A) A listing of each agency's unclassified programs in the areas relevant to the report;

(B) A short statement of the role, goals, and objective of each program;

(C) A brief technical description of each program;

(D) The funding level of each program;

(E) The budget line from which funding is derived;

(F) Summaries of the results of any studies of the transfer of the technology to industry and competitive assessments developed by the agency in the technical areas covered by the report; and

(G) Any other information requested by the Secretary of Commerce and deemed appropriate by the agency.

(3) The Office of Management and Budget shall provide to the Secretary of Commerce, in sufficient time to permit preparation of the report, with a summary of the Federal base program and Fiscal Year 1990 budget initiatives in each of the technical areas of the report.

(4) The Office of Science and Technology Policy ("OSTP") shall provide the Secretary of Commerce with appropriate policy guidance in the technical areas of the report including a summary of the criteria used to select research projects within an agency and among agencies, and the results of any studies conducted by OSTP, or by others if OSTP deems them to be relevant, which analyze the

influence of the Federal research programs in the technical areas of the report.

Sec. 3-401. A National Commission on Superconductivity. (1) Establishment. There is established a National Commission on Superconductivity ("Commission"). The Commission shall review all major policy issues regarding United States applications of recent research advances in superconductors in order to assist the Congress in deciding a national strategy, including research and development priorities, the development of which will assure United States leadership in the development and application of superconducting technologies.

(2) Membership. The membership of the Commission shall be not more than 24 individuals appointed by the President and include representatives of:

(A) The National Critical Materials Council, the National Academy of Sciences, the National Academy of Engineering, the National Science Foundation, the National Aeronautics and Space Administration, the Department of Energy, the Department of Justice, the Department of Commerce (including the National Institute of Standards and Technology), the Department of Transportation, the Department of the Treasury, and the Department of Defense, the Office of Management and Budget;

(B) Organizations whose membership is comprised of physicists, engineers, chemical scientists, or material scientists, and

(C) Industries, universities, and national laboratories engaged in superconductivity research.

(3) Chairman. A representative of the private sector shall be designated as Chairman of the Commission.

(4) Coordination. The National Critical Materials Council shall be the coordinating body of Commission and

shall provide staff support for the Commission.

(5) Report. By February 23, 1989, the Commission shall submit a report to the President and the Congress with recommendations regarding methods of enhancing the research, development, and implementation of improved superconductor technologies in all major applications.

(6) Scope of Review. In preparing the report required by subsection (5), the Commission shall consider addressing, but need not limit, its review to:

(A) The state of United States competitiveness in the development of improved superconductors;

(B) Methods to improve and coordinate the collection and dissemination of research data relating to superconductivity;

(C) Methods to improve and coordinate funding of research and development of improved superconductors;

(D) Methods to improve and coordinate the development of viable commercial and military applications of improved superconductors;

(E) Foreign government activities designed to promote research, development, and commercial application of improved superconductors;

(F) The need to provide increased Federal funding of research and development of improved superconductors;

(G) The impact on the United States national security if the United States must rely on foreign producers of superconductors;

(H) The benefit, if any, of granting private companies partial exemptions from United States antitrust laws to allow them to coordinate research, development, and products containing improved superconductors;

(I) Options for providing income tax incentives for encouraging research development, and production in the

United States of products containing improved superconductors; and

(J) Methods to strengthen domestic patent and trademark laws to ensure that qualified superconductivity discoveries receive the fullest protection from infringement.

(6) Termination. The Commission shall disband within a year of the date of this Order. Thereafter the National Critical Materials Council may review and update the report required by subsection (5) and make further recommendations as it deems appropriate.

Sec. 3-501. Metric Usage. (1)(A) The Secretary of Commerce shall develop procedures and techniques to assist industry, especially small business, as it voluntarily converts to the metric system of measurement and to increase understanding of the metric system of measurement through educational information and guidance and in Government publications;

(B) The Secretary of Commerce shall work with the Federal Interagency Committee on Metric Policy.

(2) The Secretary of Commerce shall be responsible for ensuring the successful implementation of section 5164(c) of the Omnibus Trade Act. The Secretary shall utilize the Interagency Committee on Metric Policy to oversee the establishment of Federal agency metric usage guidelines and provide necessary Government-wide coordination and assistance.

(3) The Secretary of Commerce is further authorized to seek the assistance of Federal, State and local agencies and the private sector to ensure the implementation of section 5146(c) of the Omnibus Trade Act. Maximum use should be made of existing governmental, trade, professional and metric system coordinating groups to coordinate planned

Federal transition to use of metric units.

PART IV - EDUCATION AND TRAINING FOR
AMERICAN COMPETITIVENESS

Sec. 4-101. Buy American Act of 1988.

(1) The functions vested in the President by Section 7002 of the Omnibus Trade Act, regarding Section 4(d) of Title III of the Buy American Act of 1933, as amended (41 U.S.C. 10a-10d) are delegated to the Secretary of Defense.

(2) The functions vested in the President by Section 7003 of the Omnibus Trade At, regarding the annual report required by subsection (d) of Section 305 of the Trade Agreements Act of 1979, as amended, (19 U.S.C. 2515), are delegated to the United States Trade Representative.

PART V - GENERAL

Sec. 5-101. Where this or other orders makes delegations, or where statutory authority to execute the laws of the United States is specifically assigned to subordinate officials, such delegations and assignments shall be subject to the Executive oversight and control of the President.

Sec. 5-102. Where this or other orders do not specifically delegate or assign responsibility for implementing provisions in the Omnibus Trade Act, the subordinate officials specified in such Act, or if none is specified, the official under whose responsibility a matter would normally come, is authorized to take such actions as are necessary and proper to carry out such provisions.

Sec. 5-201. Offsets. The negotiating functions of the President under section 825 (c) of the National Defense Authorization Act, Fiscal Year 1989 (P.L. 100-456, approved on September 29, 1988) are hereby jointly delegated to the Secretary of Defense and the United States Trade Representative. These functions shall be performed under

the general direction of the Secretary of State and in consultation with the Secretaries of Commerce, Labor and the Treasury.

Sec. 5-202. The reporting functions of the President under section 825 (d) of the National Defense Authorization Act, Fiscal year 1989 (P.L. 100-456, approved on September 29, 1988) are delegated to the Director of the Office of Management and Budget. The Director may further delegate to the heads of executive departments and agencies responsibility for preparing particular sections of such reports. The heads of executive departments and agencies shall, to the extent provided by law, provide the Director with such information as may be necessary for the effective performance of these functions.

Sec. 5-301. International Trade Commission Report. The functions vested in the President by Section 332(g) of the Tariff Act regarding reports by the International Trade Commission to the President, are delegated to the United States Trade Representative.

Sec. 5-401. Reciprocal Meat Inspection Requirement. The functions vested in the President by subsection h(4) of Section 20 of the Federal Meat Inspection Act (21 U.S.C. 620), as amended by section 4604 of the Omnibus Trade Act, are delegated to the Secretary of Agriculture. The Secretary of Agriculture shall carry out these functions in consultation and coordination with the United States Trade Representative and with the other affected agencies set forth in section 1-301 of this Order.

THE WHITE HOUSE,